112—405

# TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 383.

HARRIS REYNOLDS, APPELLANT,

*vs.*

THE FIRST NATIONAL BANK OF CRAWFORDSVILLE, INDIANA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

FILED OCTOBER 11, 1881.

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1 Pleas of the Circuit Court of the United States for the District of Indiana, begun and holden at the United States court-house, in the city of Indianapolis, in said district, on the first Tuesday of May, in the year of your Lord one thousand eight hundred and eighty-one, before the Honorable Walter Q. Gresham, judge of the district court of the United States for the district of Indiana, and *ex officio* judge of said circuit court.

THE FIRST NATIONAL BANK OF CRAWFORDSVILLE, INDIANA,
*vs.*
HARRIS REYNOLDS.
} 6784. Chancery.

Be it remembered that heretofore, to wit, at the November term of said court, on the 7th day of November, 1879, before the Honorable Walter Q. Gresham, judge as aforesaid, the following proceedings in the above entitled cause were had, to wit:

Comes now the complainant by Messrs. McDonald & Butler, its solicitors, and files its bill of complaint herein, in the words following, to wit:

To the honorable the judges of the circuit court of the United States for the district of Indiana, in chancery sitting:

Your orator, The First National Bank of Crawfordsville, Indiana, a corporation organized and existing under the statutes of
2 the United States of America, brings this bill against the defendant, Harris Reynolds, who is a citizen and resident of Montgomery county, in the State of Indiana.

And thereupon your orator complains and says that heretofore, to wit, on the 18th day of August, 1875, said defendant was indebted to your orator in the sum of seven thousand dollars, which indebtedness was evidenced by a certain promissory note for said amount executed by said defendant, as principal, and by Isaac M. Vance and James H. Watson, as sureties; that on said 18th day of August, 1875, for the purpose of indemnifying and saving harmless said sureties from loss by reason of their liability upon said promissory note said defendant executed and delivered to said Vance and Watson a mortgage upon certain real estate in said mortgage described, a copy of which is to this bill attached, marked Exhibit "A," and to which for greater certainty your orator begs leave to refer your honors, with like effect as if the same were here set forth at length.

Your orator further avers that afterwards, to wit, on the 17th day of September, 1877, said defendant being indebted unto your orator in the further sum of three thousand three hundred dollars, executed and delivered unto your orator a mortgage to secure
3 the repayment of said sum, which mortgage was upon the same real estate as that embraced in the mortgage to said Vance and Watson, a copy of which said mortgage to your orator is hereunto annexed, marked Exhibit "B," to which for greater certainty your orator begs leave to refer your honors, with like effect as if the same were here set forth at length.

And your orator further avers that on or about the 30th day of August, 1878, said defendant was adjudged a bankrupt by the district court of the United States for the district of Indiana, upon his own petition; and thereafter, to wit, on the 20th day of September, 1878, John W. Baird was appointed and qualified as assignee in bankruptcy of the estate of said defendant. That on the 18th day of April, 1879, said assignee reported to the said district court that no assets of the estate of said defendant had come to his hands, and no debts had been proved against said estate, and thereupon said estate was settled and said assignee discharged, and at the same time said defendant, upon his petition previously filed, was discharged from his liability under the provisions of the bankrupt act.

4 And your orator further avers that previous to the discharge of said assignee and said defendant, to wit, on the 11th day of April, 1879, said defendant represented and stated to your orator that no claims had been proved against his estate, and that he held a paper from the proper register in bankruptcy showing that fact, and showing that the title to said real estate was revested in him. That thereupon, relying upon the statement of said defendant, and believing the same to be true, it was mutually agreed between said defendant and said Vance and Watson and your orator that your orator should and would release said Vance and Watson from all further liability upon said $7,000.00 note and upon the judgment which had been rendered thereon, and in consideration thereof that said Vance and Watson should pay to your orator a certain sum and assign to your orator said mortgage executed by defendant to them, and said defendant should convey by quit-claim deed said real estate to your orator, said defendant to retain possession thereof up to the 1st day of March, 1880. That in pursuance of said agreement your orator released said Vance and Watson as agreed upon, and said Vance and Watson paid the amount agreed upon to your orator, and said mortgage,

5 of which Exhibit "A" is a copy, was duly assigned to your orator, a copy of which assignment is endorsed on said Exhibit "A," to which for greater certainty your orator begs to refer your honors, with like effect as if the same were here set forth at length; and said defendant conveyed said real estate by quit-claim deed to your orator, a copy of which is hereto annexed, marked Exhibit "C," to which for greater certainty your orator begs leave to refer your honors, with like effect as if the same were here set forth at length, and an agreement in writing was then entered into regarding the possession to be retained by said defendant, and when possession was to be delivered to your orator, a copy of which agreement is hereto attached, marked Exhibit "D," to which, for greater certainty, your orator begs leave to refer your honors, with like effect as if the same were here set forth at length

Your orator further avers that afterwards, to wit, on the 18th day of April, 1879, your orator purchased a certificate of purchase at sheriff's sale of a certain part of said real estate which had been sold upon a judgment senior to the mortgage to your orator, a copy of which certificate and agreement is hereto attached marked Ex-

hibit "E," to which for greater certainty your orator begs
6 leave to refer your honors, with like effect as the same were here recited at length; and thereafter, to wit, on the 1st day of August, 1879, at the expiration of the year of redemption, your honor received a sheriff's deed for the same, a copy of which is hereto attached marked Exhibit "F," to which for greater certainty your orator begs leave to refer your honors, with like effect as if the same were here recited at length; and your orators aver that upon the fifty-two and eighty hundredths ($52\frac{80}{100}$) acre tract in said quit-claim deed described there was outstanding a school fund mortgage senior in date to any of the said mortgages heretofore referred to, which your orator was compelled to pay off and satisfy in order to protect its security, and which your orator did pay off on the 12th day of June, 1879, as appears by the receipt of the auditor of Montgomery county, a copy of which is filed herewith, marked Exhibit "G," to which for greater certainty your orator begs to refer, with like effect as if the same were here recited at length, the amount of said mortgage, and the amount as paid, being twelve hundred and eighty-six $\frac{80}{100}$ dollars.

And your orator further avers that one Mrs. Ann Smith held a
7 certain mortgage on eighty acres of the tract of one hundred and sixty acres, which was included in said Roudabush decree and deed, and which said mortgage had been reduced to judgment and decree. That your orator bought said decree of said Smith, and paid for the same on the 31st day of May, 1879, and the same was duly assigned to your orator. Your orator avers that all said purchases and assignments were made upon the faith of the agreement and deed of said Reynolds, and for the purpose of saving expense of foreclosing said liens, and that the amount of liens so held by your orator is fully equal to the value of said real estate at the time of said agreement.

Your orator avers that now the said defendant, for the purpose of annoying your orator and to cast a cloud upon your orator's title, and to delay your orator in obtaining possession of said estate estate on the 1st day of March, 1880, gives out claims, and pretends that, after the execution of said quit-claim deed to your orator, said assignee, John W. Baird, executed and delivered to him, said defendant, a quit-claim deed for said real estate, under and by virtue of which said Reynolds now claims to be the owner of said real estate.

Complainant avers that said quit-claim deed of said as-
8 signee is wholly inoperative, null and void, because it could only operate to revest in him so much, and such part of said real estate, as might not be necessary to be used in paying the debt proven against said estate, and as to such interest the same had never passed from said defendant, but that the title always remained in said defendant, subject to the trust estate therein held by said assignee for the benefit of defendant's creditors, and that said deed is further wholly inoperative, null and void, because it was executed without any order or authority of court whatever, and that said deed is further wholly inoperative, null and void, because it was executed by a party out of possession of said real estate, and while

your orator, by its tenant, said defendant, who, by said written agreement expressly attorned to your orator as landlord, was in adverse possession of said real estate.

Wherefore and forasmuch as your orator is wholly remediless by the strict rules of law, and can only have adequate relief in a court of equity where matters of this kind are properly cognizable and relievable, your orator prays your honors for a decree quieting the title to said real estate in your orator, and removing the cloud cast thereon by said defendant, and enjoining said defend-
9 ant from further asserting any right or title to said real estate, and from cutting timber from said real estate, or otherwise wasting or injuring it, and for all other relief proper and equitable in the premises.

And your orator will ever pray, &c.

And may it please your honors to grant unto your orator the writ of subpœna directed to said defendant, Harris Reynolds, commanding him at a day certain to appear in this honorable court and then and there full, true, direct, and perfect answer make, under oath, to all and singular the averments of this bill, as fully as if thereunto specially interrogated.

FIRST NATIONAL [BANK] OF CRAWFORDSVILLE, INDIANA.
By WILLIAM H. DURHAM, *President.*

McDONALD & BUTLER,
*Solicitors for Complainant.*

STATE OF INDIANA, *Montgomery County:*

William H. Durham, being duly sworn, on oath says that he is president of the complainant, and is authorized as such to make this affidavit; that he has read the annexed and foregoing bill, and that the matters therein stated are true so far as stated of his own knowledge, and that the matters therein stated, on information and belief, are true as he verily believes.

WILLIAM H. DURHAM.

10 Subscribed and sworn to before me, Sam'l W. Austin, notary public in and for the county and State aforesaid, this 6th day of November, A. D. 1879.

Witness my hand and official seal, this day and year above written.

[SEAL.] SAM'L W. AUSTIN,
*Notary Public.*

11 EXHIBIT "A."

This indenture witnesseth: That Harris Reynolds, of Montgomery county, in the State of Indiana, mortgage and warrant to Isaac M. Vance and James H. Watson, of Montgomery county, in the State of Indiana, to wit: The northwest fractional quarter of section thirty (30), township nineteen (19) north, of range four (4) west, containing one hundred and fifty acres and $\frac{15}{100}$ of an acre. Also part of the west half of the northeast quarter of said section, town-

ship, and range, bounded as follows: Beginning at the northwest corner of said west half, running thence east six paces and thirteen links to the center of the plank road, thence south 39½° east along the center of said road seventy-four poles to a stake; thence west fifty-eight and a half poles to a stake in the line of said land; thence north sixty-six poles and 15 links to the place of beginning, containing $11\frac{50}{100}$ acres. Also part of the northeast quarter of section thirty (30), township nineteen (19) north, of range four (4) west, and bounded as follows, to wit: Beginning at the southwest cornerstone of said quarter, running thence north ninety-two (92) poles and eighteen (18) links to a stone; thence north eighty degrees (80°) east fifty-five (55) poles to a stake; thence south thirty-nine degrees (39°) east sixty-one (61) poles and eighteen (18) links; thence south five and one-half degrees (5½°) east seventeen (17) poles and five (5) links; thence south eleven and one-half degrees (11½) forty (40) poles; thence west one hundred (100) poles
12 and twenty-two (22) links to the place of beginning, containing fifty-two and eighty one hundredths ($52\frac{80}{100}$) acres, more or less, excepting and reserving from the land hereby conveyed, all railroad beds and rights of way heretofore granted to railroad companies, containing in the three tracts two hundred and fourteen (214) acres, more or less.

The conditions of the mortgage are such, that whereas Isaac M. Vance and James Watson have, this 18th day of August, 1875, became security on a certain note executed by Harris Reynolds, as principal, and the said Vance and Watson, as sureties, and payable to B. Wasson, cashier at the First National Bank of Crawfordsville, Indiana, for the sum of seven thousand dollars ($7,000) due and payable ninety days after date, with ten per cent. interest after maturity. Now, if the said Harris Reynolds shall faithfully and promptly pay said note, as above, and hold said Vance and Watson harmless, then in that event this mortgage to be void and of no effect, otherwise of full force and virtue in law. And the mortgagor expressly agree to pay the sum of money above secured without relief from valuation laws.

In witness whereof the mortgagor has hereunto set his hand and seal, this 18th day of August, 1875.

H. REYNOLDS. [SEAL.]

STATE OF INDIANA, }
*Montgomery County*, } *ss:*

Before me, James B. Crawford, a notary public in and for
13 said county, this 18th day of August, 1875, personally came Harris Reynolds and acknowledged the execution of the annexed mortgage.

Witness my hand and notarial seal, this 19th day of August 1875.

[SEAL.] JAS. B. CRAWFORD,
*Notary Public.*

For value received we assign this mortgage to the First National

Bank of Crawfordsville, Indiana, and it is expressly agreed and understood by and between the said bank and the said assignors that said mortgage shall be and remain in full force and effect for the benefit and use of said bank, and shall not be merged on account of the conveyance of said premises, in said mortgage described, by Harris Reynolds (the mortgagor) to said bank, and said bank is hereby authorized to enter satisfaction of this mortgage of record, when the said bank may desire, and shall also have the right to foreclose the same, if deemed for the interest of said bank so to do.

April 11th, 1879. JAMES H. WATSON.
ISAAC M. VANCE.

EXHIBIT "B."

This indenture witnesseth: That Harris Reynolds, of Montgomery county, in the State of Indiana, mortgage and warrant to B. Wasson, cashier First National Bank of Crawfordsville, Ind., of Montgomery [county,] in the State of Indiana, the following real estate in Montgomery county, in the State of Indiana, to wit: The
14 northwest fractional quarter of section (30) township nineteen (19) north, of range four (4) west, containing one hundred and fifty acres and $\frac{15}{100}$ of an acre. Also part of the west half of the northeast quarter of said section, township, and range, bounded as follows: Beginning at the northwest corner of said west half, running thence east six poles and thirteen links to the center of the present road, thence south 39½ east along the center of said road seventy-four poles to a stake, thence west fifty-eight and a half poles to a stake in the line of said land, thence north sixty-six poles and 15 links to the place of beginning, containing $11\frac{50}{100}$ acres. Also part of the northeast quarter of section thirty (30), township nineteen (19) north, of range four (4) west, and bounded as follows, to wit: Beginning at the southwest corner-stone of said quarter, running thence ninety-two (92) poles and eighteen (18) links to a stone, thence north eighty degrees (80°) east fifty-five (55) poles to a stone, thence south thirty-nine (39°) degrees east sixty-one (61) poles and eighteen 18 links, thence south (5½°) east seventeen (17) poles and five (5) links, thence south eleven and one-half degrees (11½°) east forty (40) poles, thence west one hundred (100) poles and twenty-two (22) links to the place of beginning, containing fifty-two and eighty one hundredths ($52\frac{80}{100}$) acres, more or less, excepting and reserving from the land hereby conveyed all
15 railroad beds and rights of way heretofore granted to railroad companies, containing in the three tracts two hundred and fourteen acres, more or less, to secure the payment when it becomes due the following described note, to wit:

$3,300.00. CRAWFORDSVILLE, IND., *July 1st*, 1877.

Twelve months after date, for value received, we jointly and severally promise to pay to the order of B. Wasson, cashier, at the First National Bank of Crawfordsville, Ind., three thousand three hundred dollars, with ten per cent. interest after maturity, and five

per cent. attorneys' fees, without relief from valuation or appraisement laws, the drawers and endorsers severally waive presentment for payment, protest, and notice of protest and non-payment of the note.

(Signed) H. REYNOLDS.

And the mortgagor expressly agrees to pay the sum of money above secured without relief from valuation laws.

In witness whereof, the mortgagor has hereunto set his hand and seal this 17th day of Sep., A. D. 1877.

H. REYNOLDS. [SEAL.]

STATE OF INDIANA,
*Montgomery county*, } *ss*:

Before me, James B. Crawford, a notary public in and for said county, this 17th day of Sept., 1877, came Harris Reynolds and acknowledged the execution of the annexed mortgage.

Witness my hand and notarial seal, this 17th day of Sept., 1877.

[SEAL.] JAMES B. CRAWFORD,
*Notary Public.*

16 EXHIBIT "C."

This indenture witnesseth: That Harris Reynolds, of Montgomery county, in the State of Indiana, releases, conveys, and quit-claims to the First National Bank of Crawfordsville, Indiana, of Montgomery county, in the State of Indiana, for the sum of nine thousand dollars, the following real estate in Montgomery county, in the State of Indiana, to wit: The northwest fractional quarter of *of* section thirty (30), township nineteen (19) north, of range four (4) west, containing one hundred and fifty acres and fifteen hundredths ($\frac{15}{100}$) of an acre. Also part of the west half of the northeast quarter of said section, township, and range, bounded as follows: Beginning at the northwest corner of said west half of the northeast quarter, running thence east six (6) poles and thirteen (13) links to the center of the plank road, thence south 39½° degrees east along the center of said road seventy-four (74) poles to a stake, thence west fifty-eight and one-half (58½) poles to a stake in the line of said land, thence north sixty-six (66) poles and fifteen (15) links to the place of beginning, containing eleven and $\frac{50}{100}$ acres. Also part of the northeast quarter of section thirty, township nineteen north, of range four (4) west, and bounded as follows, to wit: Beginning at the southwest corner-stone of said quarter section, running thence north ninety-two (92) poles and eighteen (18)
17 links to a stone, thence north (80°) degrees east fifty five (55) poles to a stone, thence south 39° degrees east sixty-one (61) poles and eighteen (18) links, thence south 5½° degrees east seventeen (17) poles and five (5) links, thence south 11½° degrees east forty (40) poles, thence west one hundred (100) poles and twenty-two (22) links to the place of beginning, containing fifty-two acres and $\frac{81}{100}$ of an acre, more or less, making in all two hundred and fourteen $\frac{46}{100}$ acres.

In witness whereof, the said Harris Reynolds has hereunto set his hand and seal, this 11th day of April, A. D. 1879.

HARRIS REYNOLDS. [SEAL.]

STATE OF INDIANA, } *ss:*
*Montgomery County,* }

Before me, Samuel W. Austin, a notary public in and for said county, this 11th day of April, A. D. 1879, Harris Reynolds acknowledged the execution of the annexed deed.

Witness my hand and official seal, this 11th day of April, A. D. 1879.

[SEAL.] SAM'L W. AUSTIN,
*Notary Public.*

EXHIBIT "D."

Memorandum of an agreement between the First National Bank of Crawfordsville, Indiana, and Harris Reynolds, witnesseth, that the said bank grants the right to the said Reynolds to hold possession of the lands this day conveyed by deed to the said bank
18 by the said Reynolds, until the first day of March, 1880, subject to the following exceptions: That said bank reserves the right to sow wheat on any part of said farm this fall. Also to sow clover seed, and to make any and all improvements that she may see proper, and is to have the rent of twenty-four acres of wheat now growing on said farm or premises, and the said Reynolds, for the consideration aforesaid, agrees to take care of said farm and suffer no waste to be committed on the same during his said tenancy, and surrender up possession of the same without notice to the said bank on the first day of March, 1880.

Witness my hand, this 11th day of April, 1879.

H. REYNOLDS.
WILLIAM H. DURHAM,
*Pres. 1st Nat. Bank, Crawfordsville.*

EXHIBIT "E."

I, William J. Krug, sheriff of Montgomery county, in the State of Indiana, certify that I have this day sold by virtue of an execution or order of sale, to me directed from the clerk of the Montgomery circuit court, issued by said clerk on the 24th day of June, 1878, and received by me on the 25th day of June, 1878, in a case wherein David Roudabush is plaintiff and Harris Reynolds, defendant, wherein judgment was recovered on the 10th day of May, 1876, for the sum of thirteen hundred and ninety-two dollars and fifty cents principal, and interest to date of judgment, and the
19 further sum of fifteen dollars and thirty-five cents costs accrued to this date; and the said Wm. J. Krug, as sheriff, as aforesaid, on the 28th day of June, A. D. 1878, levied said execution upon the following described real estate, in the county of Montgomery, and State of Indiana, to wit: The northwest quarter of section thirty (30) in township nineteen (19) north, of range four 4) west, containing one hundred and sixty acres, more or less.

And said real estate was regularly advertised, according to law, for sale on the 20th day of July, 1878, and the said William J. Krug, as aforesaid, did, between the hours prescribed by law, at the court-house of Montgomery county, offer for sale at public auction the rents and profits of said real estate for a term not exceeding seven years, and having received no bid therefor, he did then and there offer for sale at public auction the fee-simple of real estate, and David Roudabush having bid the sum of $1,626 dollars and 43 cents, and no person bidding more, the same was, in due form, openly struck off to the said David Roudabush, being the highest and best bidder therefor, and that being the highest and best price bid for the same, and the said David Roudabush paid the amount so bid by him.

The aforesaid certificate will entitle the said David Ro-dabush, the purchaser of the said real estate, as aforesaid, to a deed in fee
20 simple to said premises in one year from the day of sale, if the same is not redeemed by the defendant, or any other person entitled thereto, paying the purchase money, with interest at ten per centum per annum before the expiration of one year from the day of sale aforesaid.

Done this 20th day of July, A. D. 1878.

WM. J. KRUG,
*Sheriff Montgomery County.*
By WARNER WILHITE, *Deputy.*

Endorsed as follows: Certificate of sale on decree. William J. Krug, sheriff Montgomery county, to David Roudabush. Deed made and delivered to the First National Bank, of Crawfordsville, Indiana, assignee of David Roudabush. August 1st, 1879. Wm. J. Krug, sheriff M. C., by Wilhite.

For value received, I hereby assign this certificate of purchase for the lands therein described, and transfer all my right, title, and interest in the same to the First National Bank, of Crawfordsville, Indiana, and authorize and direct the sheriff of Montgomery county, Indiana, to execute a deed and conveyance to the said bank, if said lands are not redeemed according to law.

Witness my hand and seal, this 18th day of April, 1879.

DAVID ROUDABUSH. [SEAL.]

STATE OF INDIANA, } *ss:*
*Montgomery County,* }

Before me, Sam'l W. Austin, a notary public, within and for said county and State, on this 18th day of April, 1879, David Ro-dabush acknowledged the foregoing assignment of within
21 certificate of purchase to be his act and deed.

Witness my hand and notarial seal, this 18th day of April, 1879.

[SEAL.] SAM'L W. AUSTIN,
*Notary Public.*

EXHIBIT "F."

This indenture, made this first day of August, A. D. 1879, between William J. Krug, sheriff of Montgomery county, in the State of Indiana, of the first part, and The First National Bank of Crawfordsville, Indiana, of the county of Montgomery, and State of Indiana of the second part, witnesseth:

That whereas, at the April term of the Montgomery circuit court, A. D. 1876, David Roudabush recovered by judgment of said court in a certain action therein against Harris Reynolds, the sum of thirteen hundred and ninety-two dollars and sixty cents for his damages, together with the further sum of fifteen dollars and thirty-five cents for his costs in that behalf expended, and a decree for the sale of all the interest, estate, right, and title of the defendant, Harris Reynolds, in and to certain real estate described as follows, viz: The northwest quarter of section (30), in township nineteen (19) north, of range four (4) west, containing one hundred and sixty acres more or less.

All without any relief whatever from valuation or appraise-
22 ment laws, as by the record thereof remaining in said court more fully appears.

And whereas afterwards, to wit, on the 24th day of June, A. D. 1878, a copy of said judgment and decree was duly issued, and under the seal of said court, attested by the clerk thereof, directed to the sheriff of the county of Montgomery, commanding him that after due and legal notice of the time and place of making the same, he should sell the land above described with all the interest, estate, right and title of the defendant, Harris Reynolds, therein, or so much and such parts thereof as might be necessary according to the terms of said decree, to pay and satisfy the judgment aforesaid, with the interest and costs thereon; and that he should, in like manner, also make and return all interest and accruing costs thereon, and make due return of said writ to the clerk's office at the expiration of one hundred and eighty days from the date of the same.

And whereas said copy of judgment and order of sale on the 25th day of June, A. D. 1878, came to the hands of William J. Krug, then the sheriff of said county to be executed, and the said William J. Krug, as said sheriff as aforesaid, having legally advertised the same, did, on the 20th day of July, A. D. 1878, at the court-house door in Crawfordsville, in the county aforesaid, between the hours prescribed by law, at public auction, first expose to sale
23 the rents and profits for a term not exceeding seven years of said estate of Harris Reynolds in and to said real estate, and no person bidding for the same, then offered at public auction aforesaid, all the rights, title, and interest in fee-simple of the said Harris Reynolds in and to said estate; and the said David Roudabush did then and there bid the sum of sixteen hundred and twenty-six dollars and forty-three cents, and no person bidding more, the same was in due form openly struck off and sold to the said —— for the said sum of sixteen hundred and twenty-six dollars and forty-three cents, to him in hand paid by said David Roudabush, the receipt

whereof is hereby acknowledged, and of the non-redemption of said real estate as provided by law, hath granted, bargained, and sold and assigns forever, all the following real estate situate in the county of Montgomery, and State of Indiana, to wit:

The northwest quarter of section thirty (30), in township nineteen (19) north, of range four (4) west, containing one hundred and sixty acres, more or less.

To have and to hold all and singular the premises aforesaid, with the privileges and appurtenances, to the said First National Bank of Crawfordsville, Indiana, he- heirs and assigns forever, in as full and ample a manner as the same was held by Harris Rey-
24 nolds immediately before the execution of the mortgage mentioned in said decree foreclosing the same.

In witness whereof, the said William J. Krug, as sheriff as aforesaid, has hereunto set his hand and seal the day and year above written.

WILLIAM J. KRUG. [SEAL.]

STATE OF INDIANA, } *ss:*
*Montgomery County*, }

Before me, Marion P. Wolfe, recorder in and for said county, personally came William J. Krug, sheriff of said county, and acknowledged the foregoing conveyance to be his voluntary act and deed as such sheriff.

In witness whereof, I hereunto subscribe my name and affix my official seal of office, this 1st day of August, A. D. 1879.

M. P. WOLFE, *R. M. Co.*

EXHIBIT "G."

I acknowledge full satisfaction of the within mortgage, and deliver the same to the First National Bank of Crawfordsville June 12th, 1879.

JAMES H. WATSON, *A. M. C.*

And thereupon there issued out of the office of the clerk of said court a subpœna in chancery in the above-entitled cause, in the words following, to wit:

UNITED STATES OF AMERICA, *District of Indiana:*

25 The President of the United States of America to the marshal of the district of Indiana, Greeting:

You are hereby commanded to summon Harris Reynolds, (Montgomery Co.,) citizen of and resident in the State of Indiana, if he be found in your district, to be and appear in the circuit court of the United States for the district of Indiana aforesaid, at Indianapolis, on the first Monday in December next, to answer a certain bill in chancery, filed and exhibited in said court against him by The First National Bank of Crawfordsville, citizen of and resident in the State of Indiana. Hereof he is not to fail, under the penalty of the law thence ensuing. And have you then and there this writ.

Witness Honorable Morrison R. Waite, Chief Justice of the United States, this 7th day of November, A. D. 1879, and in the one hundred and 4th year of the Independence of the United States of America.

Attest: NOBLE C. BUTLER, *Clerk.*

MEMORANDUM: The said defendant is required to enter his appearance in this suit, in the clerk's office of said court, on or before the first Monday of December, 1879; otherwise the said bill may be taken *pro confesso.*

NOBLE C. BUTLER, *Clerk.*

And afterwards, to wit, on the 5th day of December, 1879,
26 said subpœna was returned into the office of the clerk of said court with the following return endorsed thereon, to wit:

DISTRICT OF INDIANA:

I received this writ at Indianapolis, in said district, at 11 o'clock a. m., Nov. 7th, 1879, and served the same as follows: By reading and delivering copy to Harris Reynolds at Crawfordsville, Ind., Nov. 25th, 1879.

WM. W. DUDLEY,
*U. S. Marshal.*
H. C. ADAMS, *Deputy.*

And afterwards, to wit, at the November term, A. D. 1879, of said court, on the 3d day of January, 1880, before the Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above entitled cause were had, to wit:

Comes now the defendant by S. A. Haff, and enters his appearance herein.

And afterwards, to wit, at the November term, A. D. 1879, of said court, on the 15th day of January, 1880, before the Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above entitled cause were had, to wit:

Comes now the defendant, by his solicitors, and files his demurrer to the bill herein, in the words following, to wit:

The demurrer of Harris Reynolds to the bill of complaint
27 of the First National Bank of Crawfordsville filed in said court against the said Harris Reynolds.

This defendant, by protestation, not confessing all or any of the matters and things in the said plaintiff's bill of complaint contained to be true, in such manner and form as the same are therein set forth and alleged, doth demur to the said bill, and for cause of demur-, doth show that the plaintiff hath not in and by its said bill made or stated such a case as entitles it in a court of equity to any discovery from this defendant, or to any relief against him as to the matters contained in the said bill, or any of such matters. Wherefore, and for divers other good causes of demurrer appearing

in the said bill, the defendant doth demur thereto, and humbly demands the judgment of this court whether he shall be compelled to make any further or other answer to the said bill; and prays to be hence dismissed with his costs, &c.

S. A. HUFF,
*Att'y for D'f't.*

The undersigned, S. A. Huff, attorney for the defendant in the case of the First National Bank of Crawfordsville against Harris Reynolds, in chancery, in the circuit court of the United States for the district of Indiana, hereby certifies, that in his opinion, the demurrer of the said defendant to the bill of complaint is well founded in law.

S. A. HUFF,
*Counsel for Def't.*

28 U. S. OF AMERICA, *District of Indiana*, } ss:

Before me, a commissioner of the circuit court of the United States in and for said district aforesaid, on the 13th day of January, 1880, personally appeared Harris Reynolds, who, being by me duly sworn, on oath says his demurrer to the bill of complaint of the First National Bank of Crawfordsville against him in said court is not interposed for delay.

HARRIS REYNOLDS.

Subscribed and sworn to before me this day above written.
P. S. KENNEDY, *Commissioner.*

And afterwards, to wit, at the May term, A. D. 1880, of said court, on the 29th day of May, 1880, before the Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now, on this 29th day of May, A. D. 1880, the complainant, by its solicitors, McDonald and Butler, and the respondent, Reynolds, by S. A. Huff and T. F. Davidson, his solicitor, and said respondent submits to the court his demurrer to complainant's bill of complaint; and the court, being fully advised in the premises, sustains said demurrer and grants to complainant leave to amend said bill, and thereupon the complainant, by its said solicitors, in
29 open court, tenders its amendment to its said bill of complaint, which said amendment reads in the words and figures following, to wit: And complainant avers that said Reynolds did, in fact, procure said assignee, Baird, to execute to him a quit-claim deed to said lands after he, the said Reynolds, had executed and delivered his said quit-claim to this complainant, and did, on the 11th of June, A. D. 1879, cause said quit-claim deed, so executed by said assignee, to be recorded in the record of deeds in the recorder's office of the county of Montgomery, State of Indiana, the county in which said lands are situated; and that said Reynolds is, under said deed, claiming and asserting title paramount to the title of this

complainant, (and is threatening to cut and remove valuable timber and forest trees from said farm and commit other waste and injury thereto. Complainant further avers that the cutting and removing of timber and forest trees from said farm would be an irreparable injury to said farm, inasmuch as the timber remaining upon said farm is, and will be, needed for the uses of said farm; and that said Reynolds is insolvent, and that nothing could be realized by complainant from any judgment in damages that might be obtained against him.) And the court accepts said amendment; and the same is now filed as a part of complainant's bill of
30 complaint.

And afterwards, to wit, at the May term, A. D. 1880, of said court, on the 15th day of June, 1880, before the Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the complainant, by its solicitor, and upon its motion the defendant is ruled to answer by the 28th of June.

And afterwards, to wit, at the May term, A. D. 1880, of said court, on the 26th day of June, 1880, before the Honorable Water Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the defendant, by his solicitors, and files his demurrer to the amended bill herein, in the words following, to wit:

*The Demurrer of Harris Reynolds to the Amended Bill of Complaint of the First National Bank of Crawfordsville in said Court against said Reynolds.*

This defendant, by protestation, not confessing all or any of the matters and things in the said plaintiff's amended bill of complaint contained to be true, in such manner and form as the same are therein set forth and alleged, doth demur to the said amended bill, and
31 for cause of demurrer doth show that the plaintiff hath not, in by its said bill, made or stated such a case as entitles it in a court of equity to any discovery from this defendant, or to any relief against him, as to the matters contained in the said amended bill, or any of such matters. Wherefore, and for divers other good causes of demurrer appearing in the said amended bill, the defendant doth demur thereto, and humbly demands the judgment of this court whether he shall be compelled to make any further or other answer to said amended bill, and prays to be hence dismissed, with his costs, &c.

S. A. HUFF,
*Att'y for Def't.*

The undersigned, S. A. Huff, attorney of the defendant in the case of the First National Bank of Crawfordsville against Harris Reynolds in chancery in the circuit court of the United States for the district of Indiana, hereby certifies that the demurrer of the said defendant to the amended bill of complaint is well founded in law.

S. A. HUFF, *Counsel for Def't.*

UNITED STATES OF AMERICA, *District of Indiana*, } ss:

On the 26th day of June, 1880, the above-named Harris Reynolds, being duly sworn, in open court, on oath says his demurrer to
32 the amended bill of complaint of the First National Bank of Crawfordsville against him in said court is not interposed for delay.

HARRIS REYNOLDS.

Subscribed and sworn to in open court, the day above written.

NOBLE C. BUTLER, *Clerk.*

And afterwards, to wit, at the May term, A. D. 1880, of said court on the 27th day of September, 1880, before the Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above entitled cause were had to wit:

Comes now the defendant T. F. Davidson, and Galvin and Huff, his solicitors, and files his answer herein in the words following, to wit:

*The Answer of Harris Reynolds, the Defendant, to the Bill of Complaint of the First National Bank, of Crawfordsville, Complainant.*

This defendant now, and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof, as this defendant is advised it is material or necessary for him to make answer unto, this defendant, answering, says:

33 He admits that on the 18th day of August, 1875, he was indebted to said complainant in the sum of seven thousand dollars, for which it held his promissory note with Isaac Vance and James H. Watson, sureties thereon, and that this defendant, on the day last aforesaid, executed to the said sureties the mortgage of indemnity, a copy of which appears as Exhibit "A" with the said bill of complaint.

Further answering, this defendant admits that on the 17th day of September, 1877, he was indebted to the complaint in the further sum of three thousand three hundred dollars, for which he executed his promissory note as alleged in said bill, and that to secure the same he executed the mortgage, a copy of which appears as Exhibit B with the said bill of complaint.

Further answering, this defendant admits that about the 30th day of August, 1878, he was adjudged a bankrupt, on his own petition by the district court of the United States for the district of Indiana; that on the 28th day of September, 1878, John W. Bard was appointed and qualified as the assignee in bankruptcy of this defendant's estate, and that on the 18th day of April, 1879, said assignee made his report and was discharged, and that upon petition previously filed by this defendant, he was finally discharged from his liability pursuant to the bankrupt act.

34 This defendant, further answering, says he admits that on the 11th day of April, 1879, this defendant executed to the complainant a quit-claim deed, a copy of which is made an exhibit, marked C, with the said bill of complaint, and that the said complainant concurrently therewith executed an agreement with this defendant regarding the possession to be retained by this defendant, which agreement is correctly set forth by the copy thereof made Exhibit D with the said bill of complaint. But this defendant denies that he made the representation that he held a paper from the proper register in bankruptcy showing the fact that no claims had been filed against this defendant's estate, and that the title to said real estate was revested in him as alleged in said bill of complaint, although it is probably true that this defendant, at about the time said quit-claim deed was executed, did say, as a matter of fact, that no claims had been filed against his estate. This statement was not made to induce the complainant to accept said quit-claim deed, for prior to that date thereof the agreement [of] the complainant and the said Vance and Watson and this defendant had been entered into at the solicitation of the complainant, out of which agreement the execution of the said quit-claim deed resulted. On a day prior to the said 11th day of April, 1879, an agent of the complainant called this defendant and proposed to him that if the said Vance and
35 Watson would convey to the complainant two hundred acres land which they owned by warranty deed, and this defendant would make to the complainant a quit-claim deed for the land described in the said Exhibit C, that the defendant might retain possession of the land to be conveyed by such quit-claim, and until the 1st day of March, 1880, and that the complainant, on its part, would pay off and satisfy all the debts against this defendant that were in any way liens against his real estate, which proposition was accepted by the defendant, and it was upon this agreement that the said quit-claim deed was executed, and none other. This defendant admits that at the time it was entered into, mention was made of the fact that no claims had been filed against his estate in bankruptcy, but he avers the fact to be that his estate was, at the time said proposition was made by the complainant and its acceptance was agreed to by this defendant, unsettled in bankruptcy, and that this fact was well known to the complainant at the time it received the said quit-claim deed; and this defendant avers that the said Vance and Watson on their part complied with the terms of said proposition, and conveyed to the complainant 200 acres of land by warranty deed.

Further answering, this defendant says that as to the alleged purchase by the complainant of the certificate of pur-
36 chase, a copy of which is made Exhibit E with the said bill of complainant, its reception of the sheriff's deed pursuant to said certificate, a copy of which deed is made as Exhibit "E" with said bill of complaint, this defendant is ignorant, except as informed by the averments of the said bill, but he does not deny the said averments. He answers likewise as to the averments of said bill respecting the school-fund mortgage and the complainant's

claim respecting the same, as set forth in Exhibit "G," filed with its bill of complaint. And this defendant makes like answer to the averments in said bill respecting the mortgage and decree of one Mrs. Ann Smith and the purchase thereof by the complainant.

This defendant is ignorant, except as stated in said bill, as to the averments in said bill that all said purchases and assignments were made upon the faith of the agreement and deed of this deed, and for the purpose of saving expense of for-closing the liens referred to and conveyed by said purchases and assignments; but whatever the purposes may have been, this defendant says that all said purchases and assignments were in direct violation of the agreement upon which he made said quit-claim deed and accepted said agreement respecting the continued possession of the land conveyed by said quit-claim deed.

Further answering, this defendant admits that after the
37 execution of said quit-claim deed by him to said complainant the said assignee, John W. Baird, executed to this defendant a quit-claim deed for said real estate, and that on the 11th day of June, 1879, he caused the same to be recorded in the record of deeds in the recorder's office of the county of Montgomery, State of Indiana, the county in which said lands are situated, and that he is claiming whatever title to said lands the same confers upon him.

Further answering, this defendant denies that he ever threatened to cut and remove from said lands valuable forest trees or to commit any waste or injury thereto. As to the character of such injury and the damage that might result therefrom, this defendant is advised it is wholly immaterial, inasmuch as no such injury has been committed or threatened by him.

This defendants further answering, says he is advised and believes it is [a] question of law as to what is the legal effect of the said quit-claim deed to him from the said assignee, John W. Baird, and if, as the complainant insists, it is inoperative, null and void, it cannot, nor can the recording of it, harm the complainant.

And this defendants submits that he has been guilty of nothing that would entitle the plaintiff to wage this suit; without this that there is any other matter, cause, or thing in the said com-
38 plainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed, with his costs in this behalf.

HARRIS REYNOLDS.

T. F. DAVIDSON AND
S. A. HUFF AND
GEO. W. GALVIN,
*Defendant's Solicitors.*

STATE OF INDIANA, } ss:
*Montgomery County*, }

On this 24th day of September, 1880, before the undersigned, recorder of said county and State, the above-named Harris Reynolds, being sworn, on his [oath] says the matters and things set forth in the foregoing answer by him subscribed are true, as he verily believes.

HARRIS REYNOLDS.

Subscribed and sworn to before me, this day and year above written. Witness my hand and official seal.

[SEAL.] M. P. WOLFE, *R. M. Co.*

And afterwards, to wit, at the May term, A. D. 1881, of
39 said court, on the 11th day of May, 1881, before the Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the defendant, by Samuel A. Huff, his solicitor, and filed his motion to dismiss the bill of complaint herein, in the words following, to wit:

(After diligent search, I am unable to find the above motion among the files of my office. Noble C. Butler, clerk.)

And afterwards, to wit, at the May term, A. D. 1881 of said court, on the 24th day of May, 1881, before the Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

This case having been set down by counsel for complainant for hearing on bill and answer on the 11th day of May, A. D. 1881, on said 11th day of May, 1881, came this defendant, by counsel, and in open court orally moved the court to dismiss complainant's bill, for failure to reply or except to the defendant's answer. And afterwards, on the 12th day of May, 1881, this cause having been reached for hearing, the court, being sufficiently advised in the premises, overruled defendant's said motion, it being admitted by one of defendant's counsel upon the argument of said motion that he had received notice, more than a week prior to said May 11th, that this cause had been set down for hearing on said May 11th on bill and answer; to which ruling of the court the defendant now excepts.

And thereupon the court proceeded to hear this cause upon
40 bill and answer, and having heard the argument of counsel, the court took this cause under advisement.

And now, on this 24th day of May, 1881, the court, being sufficiently advised in the premises, doth make the following finding and decree:

The court finds:

1st. That the equity of this cause is with the complainant.

2d. That the material averments of complainant's amended bill are true, except the averment as to waste and threatened waste.

3d. That each of the several deeds, mortgages, certificates, assignments, receipts, leases, contracts, and writings set forth and

exhibited with complainant's amended bill were duly made and executed as therein set forth.

4th. That John W. Baird, assignee in bankruptcy of said defendant's estate, executed a deed to the real estate hereinafter described to the defendant, Harris Reynolds, which deed was executed after the deed by said defendant to complainant, and which deed from said Baird was by defendant placed of record in the recorder's office of Montgomery county, Indiana, on July 11th, 1879, under and by virtue of which defendant is asserting title to said real estate.

5th. That said deed from said Baird to defendant is wholly inoperative, null, and void, and did not pass any title to defendant, but that said deed, and defendant's assertion of title thereunto, casts a cloud upon complainant's title to said real estate.

41 6th. That complainant is the owner in fee-simple of said real estate hereinafter described, and is entitled to the possession thereof free and clear from any right, claim, or title thereto, or to any part thereof, on the part of the defendant.

It is therefore considered, ordered, and decreed by the court that said deed from John W. Baird, assignee, to said defendant, Harris Reynolds, is null and void, and that complainant is the owner in fee-simple of the real estate hereinafter described, and entitled to the possession thereof, and that the title of complainant in and to the following-described real estate in Montgomery county, in the State of Indiana, to wit:

The northwest fractional quarter of section thirty (30), township nineteen (19) north, of range four (4) west, containing one hundred and fifty and fifteen hundredths ($150\frac{15}{100}$) acres.

Also a part of the west half of the northeast quarter of said section, township, and range, bounded as follows: Beginning at the northwest corner of said west half of the northeast quarter, running thence east six (6) poles and thirteen (13) links to the center of the plank road; thence south thirty-nine and and one-half degrees ($39\frac{1}{2}°$) east along the center of said road seventy-four (74) poles to a stake; thence west fifty-eight and a half ($58\frac{1}{2}$) poles to a stake in the line of said land; thence north sixty-six (66) poles and fifteen (15) links to the place of beginning, containing eleven and $\frac{50}{100}$ ($11\frac{50}{100}$) acres.

42 Also part of the northeast quarter of section thirty (30), township nineteen (19) north, of range four (4) west, and bounded as follows, to wit: Beginning at the southwest corner-stone of said quarter section, running thence north ninety-two (92) poles and eighteen (18) links to a stone; thence north eighty degrees (80°) east fifty-five (55) poles to a stone; thence south thirty-nine degrees (39°) east sixty-one (61) poles and eighteen (18) links; thence south five and a half degrees ($5\frac{1}{2}°$) east seventeen (17) poles and five (5) links; thence south eleven and a half degrees ($11\frac{1}{2}°$) east forty (40) poles; thence west one hundred (100) poles and twenty-two (22) links to the place of beginning, containing fifty-two and $\frac{81}{100}$ ($52\frac{81}{100}$) acres, making in all two hundred and fourteen and $\frac{46}{100}$ ($214\frac{46}{100}$) acres, be, and the same is hereby, quieted against any and

all claims of the defendant, Harris Reynolds, to any title, right, or interest in or to the same, or any part thereof, and that said defendant be, and he is hereby, restrained and forever enjoined from asserting or claiming any right, title, or interest in or to said real estate, or any part thereof, and that complainant recover of defendant its costs herein laid out and expended, taxed at —— dollars.

43 And afterwards, to wit, at the May term, A. D. 1881, of said court, on the 13th day of June, 1881, before the Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the defendant, by Thos. F. Davidson, his counsel, and files his written motion, praying an appeal to the Supreme Court of the United States from the final order and decree herein, and it appearing to the satisfaction of the court that the property in controversy is worth more than five thousand dollars, said appeal is granted on the defendant's filing a bond with the clerk of this court in the penal sum of five hundred dollars, conditioned according to law, within thirty days from this date, with sureties, to be approved by Peter S. Kennedy, a commissioner of this court, residing at Crawfordsville, Indiana.

And afterwards, to wit, at the May term, A. D. 1881, of said court, on the *the* 23d day of July, 1881, before the Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the defendant, by T. F. Davidson, Esq., his solicitor; and files his bond herein, which bond is now approved, and is in the words following, to wit:

44 Know all men by these presests, that we, Harris Reynolds, Thomas Slattery, H. I. Coleman, are hold and firmly bound unto the above-named First National Bank of Crawfordsville, Indiana, in the sum of five hundred dollars, to be paid to the First National Bank of Crawfordsville, Indiana, to which payment, well and truly to be made, we bind ourselves, jointly and severally, and our and each of our heirs, executors, and administrators, jointly by these presents.

Sealed with our seals and dated this 20th day of July, 1881.

Whereas the above-named Harris Reynolds hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the district of Indiana: Now, therefore, the condition of this obligation is, that if the above-named Harris Reynolds shall prosecute his said appeal to effect and answer all costs that may be adjudge- or awarded against him if he fail to make good his plea, then this obligation to be void, otherwise in full force.

Sealed and delivered in presence—

HARRIS REYNOLDS. [SEAL.]
THOS. SLATTERY. [SEAL.]
H. I. COLEMAN. [SEAL.]

Taken and approved by me, this 21st day of July, 1881.

P. S. KENNEDY,
*U. S. Commissioner.*

45 UNITED STATES OF AMERICA, } ss:
*District of Indiana,* }

I, Noble C. Butler, clerk of the circuit court of the United States for the district of Indiana, do hereby certify that the above and foregoing is a full, true, and complete transcript of the record in the cause of The First National Bank of Crawfordsville *vs.* Harris Reynolds, as fully as the same appears of record and remains on file in my office.

Witness my hand and the seal of said circuit court, at Indianpolis, in said district, this 15th day of August, A. D. 1881.

[SEAL.] NOBLE C. BUTLER, *Clerk.*

Endorsed on cover: Indiana C. C. U. S. No. 383, Harris Reynolds, appellant, *vs.* The First National Bank of Crawfordsville, Indiana. Filed October 11, 1881.

112-405

JAMES. H. McKENNEY
CLERK.

IN THE

# SUPREME COURT

OF THE

UNITED STATES.

HARRIS'REYNOLDS, APPELLANT.

No. 383. vs.

THE FIRST NATIONAL BANK OF CRAWFORDSVILLE, INDIANA, APPELLEE.

D. W. VOORHEES,
T. F. DAVIDSON,
Counsel for Appellant.

COVINGTON, IND.
C. H. GWYNN, PRINTER.
1884.

# SUPREME COURT

OF THE

## UNITED STATES

HARRIS REYNOLDS, Appellant,

No. 383

vs.

THE FIRST NATIONAL BANK OF CRAWFORDSVILLE, INDIANA, Appellee.

D. W. VOORHEES,
T. F. DAVIDSON,
Counsel for Appellant.

COVINGTON, IND.
C. H. GUYER, PRINTER.
1894.

IN THE

# SUPREME COURT

OF THE

UNITED STATES.

HARRIS REYNOLDS, APPELLANT.

No. 383. vs.

THE FIRST NATIONAL BANK OF CRAWFORDSVILLE, INDIANA, APPELLEE.

## STATEMENT OF THE CASE:

The appellee, complainant below, filed its bill in this cause on the 7th day of November, 1879, making appellant defendant thereto and averring:

1st. That, on the 18th day of August, 1875, Reynolds was indebted to the complainant in the sum of $7000.00, for which sum the bank held his note with Vance and Watson as sureties thereon; and that as an indemnity against loss by reason of their suretyship, Vance and Watson held a mortgage upon certain real estate, executed by appellant. 2d. That, on the 17th day of September, 1877, Reynolds executed to the complainant a mortgage upon the same real estate to secure the payment of a further

indebtedness of $3000.00. 3rd. That, in August, 1878, Reynolds was adjudged a bankrupt, and that John W. Baird was appointed assignee, who qualified, &c.; that in April, 1879, the assignee reported that there were no assets, and no debts, and upon that report the estate was settled, the assignee discharged and Reynolds discharged from liability &c. 4th. That on the 11th day of April, 1879, Reynolds represented to the complainant that no debts had been proven in bankruptcy against him, and that he held a paper from the Register showing that fact, and showing that the title to his real estate was revested in him; and that relying upon this statement an agreement was entered into between Reynolds, Vance, Watson and the complainant, to the effect that the complainant should release Vance and Watson from liability to pay the $7000.00 for which they were sureties, in consideration of which Vance and Watson were to pay the complainant a sum of money and assign to it the mortgage held by them, and Reynolds was to convey by quit claim the mortgaged property to the complainant, retaining possession until March 1st, 1880; that these agreements were executed. 5th. That afterwards the complainant "purchased a certificate of purchase at sheriff's sale of a certain part of said real estate which had been sold upon a judgment senior to the" complainant's mortgage, and at the expiration of the time for redemption took a sheriff's deed therefor. 6th. That the complainant was compelled to pay $1286.60 in discharge of a school fund mortgage upon the mortgaged real estate. 7th. That the complainant purchased from Ann Smith a decree against said land and took an assignment thereof to itself. 8th. That "said purchases and

assignments were made upon the faith of the agreement and deed of said Reynolds, and for the purpose of saving expense of foreclosing said liens, and that the amount of liens so held * * * is fully equal to the value of said real estate at the time of said agreement." 9th. That Reynolds, for the purpose of annoying complainant and casting a cloud upon its title and delaying it in getting possession, claims that after the execution of the deed to complainant, Baird the assignee executed to him a quit claim deed for the said real estate, under which he claims to be the owner. 10th. That this deed is wholly inoperative, null and void, because the interest conveyed by it never had passed from Reynolds, and because it was made without any authority from the court, and because it was executed by a party out of possession, and as to whom there was an adverse possession.

The bill concludes with a prayer for a decree quieting title and for an injunction against waste. Printed Record p. 1 to p. 4.

The several instruments referred to in the bill are made exhibits.

At the May term, 1880, Reynolds demurred to the bill, and the demurrer was sustained and leave granted complainant to amend.

The amendment was made by averring that Reynolds procured the deed from Baird after he had made his deed to complainant. That he had caused the deed from Baird to him to be recorded in the county where the lands were, and that under that deed he was claiming and asserting a title paramount to that of the complainant; and was threat-

ening to commit waste, and was insolvent. Record Pages 13 to 14, Paragraph 29.

A demurrer was filed to the amended bill but no ruling thereon was made.

Reynolds filed his answer on the 27th day of September, 1880, admitting that he was indebted as charged, in the sum of $7,000.00, and that Vance and Watson were his sureties, to whom he executed the indemnifying mortgage; and that he was also indebted to complainant in 1877 in the sum of $3,000.00 to secure which he executed a mortgage to complainant as charged; he admitted the averments concerning his bankruptcy; he denied the representations charged and averred that prior to the execution of the deed by Reynolds, the complainant proposed to him that it would pay off and satisfy all his debts which were liens upon his real estate, and permit him to retain possession until March 1st, 1880, if he would convey by quit claim to complainant the mortgaged premises, and if Watson and Vance would convey by warranty to complainant two hundred acres of land owned by them, which proposition was accepted.

That the consideration which induced the arrangement between himself, Watson, Vance and the complainant pursuant to which he executed the quit claim deed to complainant, was the undertaking and agreement of the complainant aforesaid; that Watson and Vance on their part, complied with the terms of said proposition and conveyed with covenants of warranty two hundred acres of land owned by them to complainant, the consideration for which conveyance was the complainant's agreement aforesaid; that it was upon this agreement and none oth-

er that the quit claim deed was executed; that when this arrangement was consummated Reynolds' estate yet remained unsettled in bankruptcy, as the complainant knew; that the purchases of the Sheriff's certificate and the other purchases made and assignments taken by the complainant were in violation of the agreement under which he made the deed to the complainant. The answer admits the deed from Baird and that Reynolds is claiming whatever title it confers upon him; and denies the averments of the bill as to threatened waste. Record pages 15-16-17, paragraphs 33 to 38.

The cause was "set down by counsel for complainant for hearing on bill and answer" on the 11th day of May, 1881, and on that day the counsel for Reynolds moved the court to dismiss the complainant's bill for failure to reply or except to the answer. This motion was overruled and to this ruling an exception was taken.

Record p. 18, paragraph 39.

The court thereupon proceeded to hear the cause upon bill and answer, and on the 24th day of May, 1881, found: 1st, that the equity of the case was with the complainant; 2nd, that the material averments of the amended bill were true "except the averment as to waste and threatened waste;" 3rd, that the various instruments set forth in the bill were executed as charged; 4th, that Baird, the assignee in bankruptcy, executed the deed to Reynolds as charged; 5th, that this deed was and is "wholly inoperative, null and void," and that the assertion of title thereunder casts a cloud upon complainant's title; and 6th, that the complainant is the owner of and entitled to the possession of the real estate in controversy. A decree was entered on

this finding quieting complainant's title and declaring the deed from Baird to Reynolds void. Record pages 18-19-20, paragraphs 40-42.

## ASSIGNMENT OF ERRORS.

The appellant assigns the following errors:

1st. The court erred in overruling appellant's motion to dismiss the cause.

2nd. The court erred in rendering a decree in favor of complainant upon the bill and answer.

3rd. The court erred in rendering a decree in favor of complainant after it had found in favor of the respondent upon the allegations of the bill as to waste.

4th. The court erred in decreeing that the complainant's title should be quieted.

5th. The court erred in not dismissing complainant's bill at the hearing.

## ARGUMENT.

1st. The appellant's motion to dismiss the appellee's bill was founded upon the 66th equity rule. The averments of the answer disclosed, among other things, that the appellee had violated the agreement under which it obtained the quit claim deed from appellant and that instead of discharging the indebtedness against him it had become the purchaser of it. The appellee ought not to have been permitted to found a claim to equitable relief upon an agreement which it had violated. The answer also disclosed that the averment concerning waste was untrue. Until this averment was made the court had held, upon demurrer, that the bill contained no equity. The answer also disclosed that the purchase of the land in question was inseparably connected with the purchase of land from Watson

and Vance, and that the consideration of the entire purchase was not only the satisfaction of the debt due from Reynolds, but also the complainant's undertaking to pay other debts which were also liens upon his real estate. The appellee not having excepted to this answer it was, under the 61st equity rule, to have been "deemed and taken to be sufficient." And no replication having been filed thereto the bill ought to have been dismissed under the 66th equity rule. By setting the cause down for hearing on bill and answer the complainant admitted the truth of the averments of the answer.

> Daniel's Ch. Prac. Vol. 2, 982; Ibid, Vol. 1. 828-829; Peirce v. West's Exrs. 1, Pet. C. C. 351; United States v. Scott 3 Woods 334.

2nd. Apart from the averment as to threatened waste, which was found to be untrue, the appellee's bill contained no equity, and was not sufficient in its averments to support a decree in its favor. The bill in this case avers that the deed under which the respondent is charged with claiming title "is wholly inoperative, null and void," because, among other things, "it could only operate to revest in him so much, and such part of said real estate, as might not be necessary to be used in paying the debts proven against said estate, and as to such interest the same had never passed from said defendant, but that the title always remained in said defendant, subject to the trust estate." &c.; and "because it was executed without any order of court whatever," and the court so found and decreed. This averment being true the complainant was not entitled to ask a court of equity to quiet his title. Courts of equity

do not entertain jurisdiction to quiet title or remove a cloud therefrom when the instrument constituting the cloud is void on its face, or when, though not void on its face the party claiming under it, in order to enforce it, must necessarily offer evidence which will inevitably show its invalidity and destroy its efficacy.

Tyson v. Brown, 64 Ala. 244.
Munson v. Munson 28 Conn., 582.
Ward v. Dewey, 16 N. Y. 518.
Dederer v. Voorhees, 81 N. Y. 153,
Cox v. Clift, 2 N. Y. 118.
Schroeder v. Gurney, 73 N. Y. 430.
Wells v. Buffalo, 80 N. Y. 253.
Townsend v. Mayor, &c., 77 N. Y. 542.
Sanders v. Yonkers, 63 N. Y. 489.

It appears from the facts averred and found to be true that the alleged invalidity of appellant's deed would inevitably present itself in any attempt by him to enforce a claim under it.

Farnham v. Campbell 34 N. Y. 480.

Under no circumstances could this deed be used as evidence of title until the existence of the requisite authority for its execution had been produced, and if, as alleged and found to be true, this authority never existed, the deed could not be used for any purpose. The defects which, as alleged, render this deed void occur in the chain of title "which * * must be developed in all its parts before any advantage can be derived under it."

Busbee v. Lewis, 85 N. Car. 332.

It is not made to appear that Reynolds ever conveyed to Baird, or that Baird ever held any title other than such as he acquired by reason of his appointment as assignee. If this was the condition

of affairs the deed from Baird to Reynolds truly conveyed nothing, precisely as the complainant has averred, and any action, therefore, brought by Reynolds, based on such a deed, would fall of its own weight.

Rea vs Longstreet, 54 Ala. 291.

If the deed from the assignee to Reynolds is invalid it is because of facts that will always appear from an inspection of the proceedings in bankruptcy. No lapse of time can deprive the appellant "of his full means of defense" to any claim under it.

Story's Eq. Jur. §700 a.
Phelps vs. Harris, 11 Otto, 370.
Waterbury Savings Bk. vs. Lawler, 46 Conn. 243.
Haines' Appeal, 73 Pa. St. 169.

If the validity of Reynold's claim is "merely doubtful, it is more than a cloud, and he is entitled to have it tried by an action at law; and if it is invalid on its face, so that it can never be successfully maintained, it does not amount to a cloud, but may always be repelled by an action at law."

Phelps vs. Harris, Supra.

It is not at all clear that the appellee's title is free from doubt. When the deed was made to it by Reynolds the land was in the custody of the law. Reynolds had no power to convey at that time. Again, while the appellee, as a National Bank, had the power to take this land in satisfaction of its debt, it had no power to become a purchaser for other considerations. Its agreement to pay other debts due from Reynolds was illegal, for it must be remembered that it appears by the averments of the answer, that, as part of the consideration of this

agreement, the appellee received a deed, not only for the Reynold's land, but also for two hundred acres of land belonging to Watson and Vance. The debts which the appellee undertook to pay for Reynolds were not in any way a charge upon the latter tract. Neither was appellee's debt a charge upon it, and Watson and Vance were indebted, as sureties for no more than $7000.00 of Reynold's indebtedness. They conveyed, therefore, not merely to pay the debt for which they were sureties, but in consideration of appellee's promise to pay other debts for which neither they nor their land was liable. The agreement was entire, and if any part of it was illegal the whole was necessarily so. If, under Section 28 of the National Bank act, the appellee had the right to purchase these lands to secure the debts due it from Reynolds, it had not the right to undertake, as part of the consideration given for the lands, to pay other debts due from Reynolds, the payment of which was not necessary to the completion of the title. It may be observed in this connection that it appears, by the bill, that claimant acquired from Watson and Vance the $7000.00 Mortgage which, so far as it is made to appear, was prior to the judgments, decrees and mortgages purchased by the claimant and a first lien upon the Reynold's land.

It is averred in the bill "that the amount of the liens so held * * * is fully equal to the value of said real estate." In this way it appears that the Reynold's land was equal in value to all the claims held by the complainant against Reynolds, and consequently amply sufficient for the protection of Watson and Vance. There was, therefore, no reason why Watson and Vance should convey two-

hundred acres of land to the complainant, except that Reynolds should be freed from all his debts which were, "in any way," liens upon his real estate, including the $3,000.00 debt to complainant.

The appellee was not entitled to relief if its title was doubtful or if it was founded upon an illegal transaction.

Phelps vs. Harris. Supra.
Wheeler vs. Sage. 1 Wall. 518.

The appellee did not better its condition by taking a sheriff's deed for the land in question, because that was a violation of its agreement with Reynolds to pay instead of purchase, his debts. The appellee ought not to acquire a standing in a court of equity by violating its agreement and thereby putting itself in a position to hold the purchased debts over Reynolds and at the same time claim the land. Another reason why the appellee ought not to be permitted to claim under the sheriff's deed is that it reached its position as a purchaser of the sheriff's certificate through the transaction with Reynolds, Vance and Watson; and if that transaction cannot stand, all that is built upon it must fall.

Upon the facts alleged concerning the question of title the complainant's remedy was a legal and not an equitable one. There was a complete and adequate remedy at law.

"Those only who have a clear legal and equitable title to land connected with possession, have any right to claim the interference of a court of equity to give them peace or dissipate a cloud on the title."

Orton v. Smith 18 How. 263, 266.

The complainant's "title appears by the bill to be merely legal, * * * and no particular circumstances are stated, showing the necessity of the

court's interfering either for preventing suits or other vexation, or for preventing an injustice, irremediable at law."

Hipp v. Babin, 19 How. 271—279.

The complainant's claim is an assertion of legal title to lands not in possession against one in possession.

Harrington v Williams, 31 Texas 448.
Apperson v. Ford, 23 Ark. 746.
Tyson v. Brown, Supra.
Miller v. Neiman, 27 Ark. 233.
Keane v. Kyne, 66 Mo. 216.
Busbee v. Lewis, Supra.

When the court found upon the hearing that the averment of threatened waste was untrue, there no longer remained any equity in the bill, and there was left no foundation for a decree in favor of appellee. There ought not, therefore, to have been a decree.

Hipp v. Babin, Supra.

If the appellee's case as disclosed by the bill and answer and the finding of the court thereon was wanting in equity it was not entitled to the redress sought.

Wright v. Ellison, 1 Wall 16..

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IN THE

# SUPREME COURT

OF THE UNITED STATES.

HARRIS REYNOLDS,
*Appellant,*

vs.

THE FIRST NATIONAL BANK OF CRAWFORDSVILLE, INDIANA,
*Appellee.*

No. 383.
October Term, 1883.

## *BRIEF FOR APPELLEE.*

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*Appeal from the Circuit Court of the United States for the District of Indiana.*

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## *BRIEF FOR APPELLEE.*

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The various errors assigned are discussed under two heads by appellant's counsel, viz: (1) The motion to dismiss under the 66th Equity rule; (2) The decree of the court upon the hearing on bill and answer. What we have to say will be arranged in the same order.

## I.

### THE MOTION TO DISMISS UNDER EQUITY RULE 66.

The above mentioned rule in Equity had no application to the present case. The object of the general replication is to give the defendant an opportunity to prove that his answer is true. When, according to the ancient and honored practice, the complainant has the case set down for hearing on bill and answer, instead of filing a replication, the truth of the answer is admitted. The defendant is relieved of the necessity of proving the answer. The reason for filing a replication no longer exists. When the reason of the rule does not exist the rule can have no application. If the position taken by appellant's counsel were correct there could be no such practice as hearing on bill and answer. A replication and proof in support of the answer would always be required. Whenever the complainant does not file a replication the bill would have to be dismissed. Such is not the practice. The authorities cited by appellant's counsel (brief, p. 7,) show that hearing on bill and answer is recognized as proper practice in suits in equity in courts of the United States. To same effect see

*Poultney* v. *City of Lafayette*, 3 Howard 81.

Further, even if the position of appellant's counsel were correct, the record shows the right to dismiss for failure to file replication was in effect waived. The record shows the answer was filed September 27, 1880. (Printed Record, p. 5.) Under the letter of Rule 66, the replication was due the first succeeding rule day in

October. It was not filed, and no steps were taken by defendant to have the case dismissed. About May 3, 1881, no motion to dismiss having yet been made, the complainant had the cause set for hearing on bill and answer. No motion to dismiss was made until the day when the cause was set for final hearing, May 11, 1881. (Record, p. 18). The record shows that on argument of the motion it was admitted by one of defendant's counsel "that he had received notice, more than a week prior to said May 11th, that this cause had been set down for hearing on said May 11th on bill and answer." Record, p. 18). If the appellant had any right to object to a hearing upon bill and answer, and to have the bill dismissed for failure to file replication, such right was waived by failure to move to dismiss, until after the cause had been set down for hearing on bill and answer, more than a week's notice of such setting being given appellant's counsel, and yet no motion to dismiss being made until the time set for the hearing had arrived.

## II.

### THE DECREE.

It is claimed that a court of equity had no jurisdiction to quiet title as against a deed void on its face. But appellant's counsel overlook the fact that the Indiana Statutes create a right in the complainant to bring an action to quiet title in such cases as this, and that such right will be enforced in a Court of Equity of the United States.

In the case of *Clark* v. *Smith*, 13 Peters 195, on pp.

202 *et seq.*, in which a statute of Kentucky quite similar to the Indiana statute was under consideration, the Court say:

"Kentucky has the undoubted power to regulate and protect individual rights to her soil, and to declare what shall form a cloud on titles; and having so declared, the courts of the United States, by removing such clouds, are only applying an old practice to a new equity created by the Legislature. * * * The State Legislatures certainly have no authority to prescribe the forms and modes of proceeding in the courts of the United States, but having created a right, and at the same time prescribed the remedy to enforce it, if the remedy prescribed is substantially consistent with the ordinary modes of proceeding on the chancery side of the Federal courts, no reason exists why it should not be pursued in the same form as it is in the State courts; on the contrary, propriety and convenience suggest that the practice should not materially differ where titles to lands are the subjects of investigation. And such is the constant course of the Federal courts."

See also *Fitch* v. *Creighton*, 24 Howard 159.

*Railway Company* v. *Whitton*, 13 Wallace 270, on p. 286.

*Ex parte McNiel*, 13 Wallace 236.

The Indiana statute in question is as follows:

"An action may be brought by any person either in or out of possession, or by one having an interest in remainder or reversion, against another who claims title to or interest in real property adverse to him, although

the defendant may not be in possession thereof, for the purpose of determining and quieting the question of title."

R. S. 1881, §1070.

Under this statute, it is clear, that whatever the interest or title of the complainant, and whether the defendant claimed under a deed void on its face or not, if defendant's claim was ADVERSE to complainant, the right existed to have the question of title determined and quieted. Under this statute, as construed by the Indiana Supreme Court, it is sufficient to aver either that the defendant claims some interest or title adverse to complainant, without stating at all what it is, or to state the respective claims at length and show inferentially that they are adverse.

*Marot* v. *The Germania, etc.*, 54 Ind. 37.

*Jeffersonville, etc., R. R. Co.* v. *Oyler*, 60 Ind. 383, on p. 392.

*Gillett* v. *Carshaw*, 50 Ind. 381.

*Dumont* v. *Dufore*, 27 Ind. 263.

The amendment made by complainant to the original bill (*Printed Record*, p. 13,) contains these words:

"Said Reynolds is, under said deed, claiming and asserting title paramount to the title of this complainant."

The answer admits that "defendant is claiming whatever title to said lands the same confers on him."

The respective claims of complainant and defendant are shown, by bill and answer, to be adverse. The amendment to the bill made it good under the Indiana

statute if it was not already so, and made a case in which the question of title might be determined and quieted.

Another reason why the court below had the right to make a decree settling the question of title is that the bill as amended contained the following averment:

The defendant "is threatening to cut and remove valuable timber and forest trees from said farm, and commit other waste and injury thereto. Complainant further avers that the cutting and removing of timber and forest trees from said farm would be an irreparable injury to said farm, inasmuch as the timber remaining upon said farm is, and will be, needed for the uses of said farm, and that said Reynolds is insolvent, and that nothing could be realized by complainant from any judgment in damages that might be obtained against him."

These averments clearly made a case proper for the cognizance of a Court of Equity. Nothing is better settled than that, equity having once acquired jurisdiction, will go on to render complete relief to the parties. It is true the answer denies the allegations of waste. But this fact being developed subsequently to the bringing of the suit, after the court had acquired jurisdiction of the cause, could not prevent the court from going on and giving complete relief. It nowhere appears that complainant, at the time of filing the bill, knew that the defendant was not threatening waste. The fact that no waste was threatened comes to light in the progress of the cause, for the first time, when defendant's answer was filed. This could not defeat jurisdiction already acquired to render complete relief.

*Milkman* v. *Ordway*, 106 Massachusetts 232.

Even if, as appellant's counsel contend, the jurisdiction of a court of equity to quiet title does not exist where the deed under which defendant claims is void on its face, this is not such a case. It does not appear, from bill or answer, that the deed to Reynolds showed on its face that it was executed by Baird *as assignee in bankruptcy*. Consequently it is not shown that, before the deed could ever be used in evidence, the lack of an order of the bankrupt court, authorizing it, would inevitably appear. So far as the bill and answer show, Baird, in possession as assignee, may have conveyed to Reynolds, as in his own right, without referring to the trust, in his deed. In such a case there is clearly a cloud on the title against which a court of equity will relieve.

*Ward* v. *Dewey*, 16 N. Y. 519, p. 529.

Even if the foregoing positions were incorrect, the position assumed by appellant's counsel seems logically inconsistent. That position is appellant's title is void, and *therefore*, he must not be disturbed. Pomeroy in his late work says on this subject: "While this doctrine may be settled by the weight of authority, I must express the opinion that it often operates to produce a denial of justice. It leads to the strange scene almost daily, in the courts, of defendants urging that the instruments under which they claim *are void*, *and therefore*, *that they ought to be permitted* to stand unmolested; and of judges deciding that the court cannot interfere, because the deed or other instrument is void; while from a business point of view, every intelligent person knows

that the instrument is a serious injury to the plaintiffs title, greatly depreciating its market value; and the judge himself, who repeats the rule, would neither buy the property while thus affected, nor loan a dollar upon its security. This doctrine is, in truth, based upon mere verbal logic, rather than upon considerations of justice and expediency." 3 Pomeroy's Eq. Jurisprudence, §1399.

It is also claimed for appellant that if his claim of title is not void on its face, and therefore, being *less than a cloud*, too trifling for a court of equity to relieve against, it is so strong a claim that it is more than a cloud and does not fall within the jurisdiction of equity. Among the answers to this, is that the Indiana Statute authorizes the determination and quieting of all questions of title, whenever defendant's claim is *adverse* to complainant's, and that a Court of Equity having obtained jurisdiction by virtue of the averment of threatened waste in the bill, cannot permit its jurisdiction to go on and give full relief, to be ousted, by the development in the progress of the cause of the fact that there was no threatened waste, certainly, when it does not appear in the answer that complainant knew at the time of filing his bill that no waste was threatened. It may also be remarked that Reynolds had attorned as tenant of this land to appellee and the latter was therefore in possession. An action in ejectment at law could not have been maintained by appellee, without first surrendering this possession.

*Sullivan* v. *Finnegan*, 101 Mass. 447.

Appellee's title seems too clear to be questioned.

The bankruptcy act contains no provision for a reconveyance of surplus property not required for debts, by the assignee to the bankrupt. The surplus however, belongs to the bankrupt.

Bump on Bankruptcy, 9 ed. p 247.

Reynolds had a contingent interest in the property to the extent of whatever might remain after the termination of the bankruptcy.

*Bullymore* v. *Cooper*, 46 N. Y. 236, on p. 248.

*Stevens* v. *Earles*, 25 Mich., p. 40.

Reynolds therefore had unquestionably the right, pending the bankruptcy, to sell or convey this contingent interest. As against the assignee requiring the property to pay debts, such a conveyance would of course have no effect. Though the legal title was in the assignee, Reynolds held an equitable interest in the property, subject to the trust or power vested in the assignee, which he sold and conveyed to the bank by his quit claim.

It is objected that, by purchasing the sheriff's certificate, and also taking an assignment of the decree against the land, appellee violated the agreement under which the quit claim deed was given by Reynolds. This, however, was simply the easiest way to clear up the title to the land, and as in favor of Reynolds, equity, regarding that as done which ought to have been done, would treat these purchases as payments. If however, these purchases were not made in pursuance of the agreement, but in violation of it, then the legal title to the land became vested in appellee, by virtue of the

sheriff's deed and the decree, and appellee's title as against appellant is perfect, independently of the quit claim from Reynolds.

It is objected, too, that appellee had no power to bind itself to pay Reynold's debts, because a part of the consideration was the conveyance to it of real estate. This is a strange extension of the language of the statute. But it is plain that the whole transaction on the part of the bank was a bona fide attempt to secure payment of Reynold's indebtedness. In such a transaction, the bank might lawfully purchase realty if necessary, in excess of its claim.

*Upton* v. *National Bank*, 120 Mass. 153.

Even if the foregoing were not true, the objection that the purchase of the realty was void as *ultra vires*, is one which can only be raised by the government, not by Reynolds.

*Union National Bank* v. *Matthews*, 98 U. S. 621.

*National Bank* v. *Whitney*, 103 U. S. 99.

*Swope* v. *Leffingwell*, 105 U. S. 3.

Appellee's title is clear, perfect and free from all possible doubt.

Even if Reynold's title were "merely doubtful," we have shown an action at law in ejectment could not have been maintained by appellee without first surrendering possession. In a suit in equity to determine the question of title, could complete relief alone be had. But Reynold's title is clearly invalid. It appears from the bill and answer that the deed of Baird to Reynolds was made without any order of court authorizing it.

It further appears that no creditors of Reynolds ever filed any claims in the bankruptcy proceedings. It follows that Baird, the assignee, never took any beneficial title to the property, and therefore could convey none to Reynolds.

Assignees hold the property in trust *as trustee for the creditors.*

*Clark* v. *Clark*, 17 How. 315.

The rights and titles that vest in the assignee are official and not personal.

*Stevens* v. *Earles*, 25 Mich. 40.

There being no creditors there were no *cestuis que trustent.* If there were no *cestuis que trustent* there could be no trust, and the title of the assignee was void *ab initio.*

During the pendency of the bankruptcy proceedings, however, Reynold's ownership of the land was not interrupted, and he retained the "actual ownership in equity" to his realty, which should remain undisposed of by the assignee.

*Colie* v. *Jameson*, 13 N. B. Register 1.

*Bullymore* v. *Cooper*, 46 N. Y., on p. 248.

*Stevens* v. *Earles*, 25 Mich. 40.

Adams on Equity, p. 31.

This "actual ownership in equity" of the undisposed of property, whatever it might be, passed by virtue of the quit claim deed to appellee, and this equitable and real title is to be protected in a Court of Equity as

against the nominal, legal title, if any, obtained from the assignee.

An affirmance of the decree rendered below is respectfully asked.

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